

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WALTHAM LIQUOR,

Plaintiff(s),

CASE NUMBER: 09-10835
HONORABLE VICTORIA A. ROBERTS

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, FOOD AND
NUTRITION SERVICE,

Defendant(s).

_____ /

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

Waltham Liquor store ("Waltham") was disqualified from participating in the Special Supplemental Nutrition Program for Women, Infants and Children ("WIC"). Subsequently, Waltham was disqualified from participating in the Supplemental Nutrition Assistance Program ("SNAP") for three years. 7 C.F.R. §279.7(a) provides that such firms have no remedy in federal court:

Except for firms disqualified from the [SNAP] program in accordance with §278.6(e)(8) [i.e., firms previously disqualified from the WIC program], a firm aggrieved by the determination of the designated reviewer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction.

See also 7 U.S.C. §2021(g)(2)(C) (a retailer's disqualification from SNAP, which results from a disqualification from WIC, shall not be subject to judicial review).

Nonetheless, Waltham filed a Petition for Judicial Review of Defendant's decision to disqualify Waltham from participating in SNAP on March 5, 2009. Waltham says

Defendant should have imposed a civil money penalty instead of disqualification.

Before the Court is Defendant's Motion to Dismiss. (Doc. #4). Defendant asks the Court to dismiss Waltham's petition for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

Waltham did not respond.

The Court has considered Defendant's motion on the merits, and agrees it lacks subject matter jurisdiction.

Defendant's motion to dismiss is **GRANTED**.

IT IS ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: August 27, 2009

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on August 27, 2009.

s/Linda Vertriest
Deputy Clerk